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LRB095 04636 AJ0 33733 a

1 AMENDMENT TO HOUSE BILL 233

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 233 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Sections 103, 302, 304,  
6 403, 501, 511, 604, and 606 as follows:

7 (750 ILCS 5/103) (from Ch. 40, par. 103)

8 Sec. 103. Trial by Jury.)

9 (a) There shall be no trial by jury under this Act, except  
10 where authorized under subsection (b).

11 (b) A jury trial pilot program shall be established in  
12 Suburban Municipal District 4 of the Circuit Court of Cook  
13 County. Under the jury trial pilot program, cases in Suburban  
14 Municipal District 4 may be heard by the court with a jury only  
15 to the extent permitted by this Act. The Supreme Court and the  
16 Circuit Court of Cook County shall adopt rules to govern the

1 jury trial pilot program, including the starting date for the  
2 jury trial pilot program. The jury trial pilot program shall  
3 end 2 years after the starting date. Only cases that are  
4 commenced after the starting date shall be eligible to be heard  
5 by the court with a jury under the jury trial pilot program.  
6 Any case that is heard by the court with a jury under the jury  
7 trial pilot program and is still pending when the jury trial  
8 pilot program ends may be heard to final judgment by the court  
9 with a jury. The Supreme Court may make any findings, reports,  
10 or recommendations it wishes to make regarding the jury trial  
11 pilot program.

12 (Source: P.A. 80-923.)

13 (750 ILCS 5/302) (from Ch. 40, par. 302)

14 Sec. 302. Time of Commencement.) (a) A declaration of  
15 invalidity under paragraphs (1) through (3) of Section 301 may  
16 be sought by any of the following persons and must be commenced  
17 within the times specified:

18 (1) for any of the reasons set forth in paragraph (1) of  
19 Section 301, by either party or by the legal representative of  
20 the party who lacked capacity to consent, no later than 90 days  
21 after the petitioner obtained knowledge of the described  
22 condition;

23 (2) for the reason set forth in paragraph (2) of Section  
24 301, by either party, no later than one year after the  
25 petitioner obtained knowledge of the described condition;

1           (3) for the reason set forth in paragraph (3) of Section  
2 301, by the underaged party, his parent or guardian, prior to  
3 the time the underaged party reaches the age at which he could  
4 have married without needing to satisfy the omitted  
5 requirement.

6           (b) In no event may a declaration of invalidity of marriage  
7 be sought after the death of either party to the marriage under  
8 subsections (1), (2) and (3) of Section 301.

9           (c) A declaration of invalidity for the reason set forth in  
10 paragraph (4) of Section 301 may be sought by either party, the  
11 legal spouse in case of a bigamous marriage, the State's  
12 Attorney or a child of either party, at any time not to exceed  
13 3 years following the death of the first party to die.

14           (d) This subsection (d) applies only to the jury trial  
15 pilot program established under Section 103. A case may be  
16 heard by the court with a jury only if a party demands a trial  
17 by jury in accordance with the Code of Civil Procedure and the  
18 other party agrees to have the case heard by the court with a  
19 jury. The grounds for declaration of invalidity of marriage  
20 shall be heard by the court without a jury.

21 (Source: P.A. 80-923.)

22 (750 ILCS 5/304) (from Ch. 40, par. 304)

23 Sec. 304. Retroactivity.)

24 (a) Unless the court finds, after a consideration of all  
25 relevant circumstances, including the effect of a retroactive

1 judgment on third parties, that the interests of justice would  
2 be served by making the judgment not retroactive, it shall  
3 declare the marriage invalid as of the date of the marriage.  
4 The provisions of this Act relating to property rights of the  
5 spouses, maintenance, support and custody of children on  
6 dissolution of marriage are applicable to non-retroactive  
7 judgments of invalidity of marriage only.

8 (b) This subsection (b) applies only to the jury trial  
9 pilot program established under Section 103. If the court  
10 declares a judgment of invalidity of marriage to be  
11 non-retroactive and the case is heard by the court with a jury,  
12 contested issues relating to property rights of the spouses,  
13 maintenance, support, and custody of children shall be heard by  
14 the court with a jury.

15 (Source: P.A. 80-923.)

16 (750 ILCS 5/403) (from Ch. 40, par. 403)

17 Sec. 403. Pleadings - Commencement - Abolition of Existing  
18 Defenses - Procedure.)

19 (a) The petition for dissolution of marriage or legal  
20 separation shall be verified and shall minimally set forth:

21 (1) the age, occupation and residence of each party and  
22 his length of residence in this State;

23 (2) the date of the marriage and the place at which it  
24 was registered;

25 (2.5) whether a petition for dissolution of marriage is

1 pending in any other county or state;

2 (3) that the jurisdictional requirements of subsection  
3 (a) of Section 401 have been met and that there exist  
4 grounds for dissolution of marriage or legal separation.  
5 The petitioner need only allege the name of the particular  
6 grounds relied upon, which shall constitute a legally  
7 sufficient allegation of the grounds; and the respondent  
8 shall be entitled to demand a bill of particulars prior to  
9 trial setting forth the facts constituting the grounds, if  
10 he so chooses. The petition must also contain:

11 (4) the names, ages and addresses of all living  
12 children of the marriage and whether the wife is pregnant;

13 (5) any arrangements as to support, custody and  
14 visitation of the children and maintenance of a spouse; and

15 (6) the relief sought.

16 (b) Either or both parties to the marriage may initiate the  
17 proceeding.

18 (b-5) This subsection (b-5) applies only to the jury trial  
19 pilot program established under Section 103. A case may be  
20 heard by the court with a jury only if a party demands a trial  
21 by jury in accordance with the Code of Civil Procedure and the  
22 other party agrees to have the case heard by the court with a  
23 jury.

24 (c) The previously existing defense of recrimination is  
25 abolished. The defense of condonation is abolished only as to  
26 condonations occurring after a proceeding is filed under this

1 Act and after the court has acquired jurisdiction over the  
2 respondent.

3 (d) The court may join additional parties necessary and  
4 proper for the exercise of its authority under this Act.

5 (e) Contested trials shall be on a bifurcated basis with  
6 the grounds being tried first. Upon the court determining that  
7 the grounds exist, the court may allow additional time for the  
8 parties to settle amicably the remaining issues before resuming  
9 the trial, or may proceed immediately to trial on the remaining  
10 issues. In cases where the grounds are uncontested and proved  
11 as in cases of default, the trial on all other remaining issues  
12 shall proceed immediately, if so ordered by the court or if the  
13 parties so stipulate, issue on the pleadings notwithstanding.

14 (e-5) This subsection (e-5) applies only to the jury trial  
15 pilot program established under Section 103. Contested trials  
16 shall be on a bifurcated basis with the grounds being tried  
17 first. The grounds shall be heard by the court without a jury.  
18 Upon the court determining that the grounds exist, the court  
19 may allow additional time for the parties to settle amicably  
20 the remaining issues before resuming the trial, or may proceed  
21 immediately to trial on the remaining issues after the court  
22 has impaneled the jury. Uncontested issues shall not be  
23 submitted to the jury.

24 (f) Even if no bill of particulars shall have been filed  
25 demanding the specification of the particular facts underlying  
26 the allegation of the grounds, the court shall nonetheless

1 require proper and sufficient proof of the existence of the  
2 grounds.

3 (Source: P.A. 90-174, eff. 10-1-97.)

4 (750 ILCS 5/501) (from Ch. 40, par. 501)

5 Sec. 501. Temporary Relief.) In all proceedings under this  
6 Act, temporary relief shall be as follows:

7 (a) Either party may move for:

8 (1) temporary maintenance or temporary support of a  
9 child of the marriage entitled to support, accompanied by  
10 an affidavit as to the factual basis for the relief  
11 requested;

12 (2) a temporary restraining order or preliminary  
13 injunction, accompanied by affidavit showing a factual  
14 basis for any of the following relief:

15 (i) restraining any person from transferring,  
16 encumbering, concealing or otherwise disposing of any  
17 property except in the usual course of business or for  
18 the necessities of life, and, if so restrained,  
19 requiring him to notify the moving party and his  
20 attorney of any proposed extraordinary expenditures  
21 made after the order is issued;

22 (ii) enjoining a party from removing a child from  
23 the jurisdiction of the court;

24 (iii) enjoining a party from striking or  
25 interfering with the personal liberty of the other

1 party or of any child; or

2 (iv) providing other injunctive relief proper in  
3 the circumstances; or

4 (3) other appropriate temporary relief.

5 (b) The court may issue a temporary restraining order  
6 without requiring notice to the other party only if it finds,  
7 on the basis of the moving affidavit or other evidence, that  
8 irreparable injury will result to the moving party if no order  
9 is issued until the time for responding has elapsed.

10 (c) A response hereunder may be filed within 21 days after  
11 service of notice of motion or at the time specified in the  
12 temporary restraining order.

13 (c-1) As used in this subsection (c-1), "interim attorney's  
14 fees and costs" means attorney's fees and costs assessed from  
15 time to time while a case is pending, in favor of the  
16 petitioning party's current counsel, for reasonable fees and  
17 costs either already incurred or to be incurred, and "interim  
18 award" means an award of interim attorney's fees and costs.  
19 Interim awards shall be governed by the following:

20 (1) Except for good cause shown, a proceeding for (or  
21 relating to) interim attorney's fees and costs shall be  
22 nonevidentiary, summary in nature, and expeditious. When a  
23 party files a petition for interim attorney's fees and  
24 costs supported by one or more affidavits that delineate  
25 relevant factors, the court (or a hearing officer) shall  
26 assess an interim award after affording the opposing party

1 a reasonable opportunity to file a responsive pleading. A  
2 responsive pleading shall set out the amount of each  
3 retainer or other payment or payments, or both, previously  
4 paid to the responding party's counsel by or on behalf of  
5 the responding party. In assessing an interim award, the  
6 court shall consider all relevant factors, as presented,  
7 that appear reasonable and necessary, including:

8 (A) the income and property of each party,  
9 including alleged marital property within the sole  
10 control of one party and alleged non-marital property  
11 within access to a party;

12 (B) the needs of each party;

13 (C) the realistic earning capacity of each party;

14 (D) any impairment to present earning capacity of  
15 either party, including age and physical and emotional  
16 health;

17 (E) the standard of living established during the  
18 marriage;

19 (F) the degree of complexity of the issues,  
20 including custody, valuation or division (or both) of  
21 closely held businesses, and tax planning, as well as  
22 reasonable needs for expert investigations or expert  
23 witnesses, or both;

24 (G) each party's access to relevant information;

25 (H) the amount of the payment or payments made or  
26 reasonably expected to be made to the attorney for the

1 other party; and

2 (I) any other factor that the court expressly finds  
3 to be just and equitable.

4 (2) Any assessment of an interim award (including one  
5 pursuant to an agreed order) shall be without prejudice to  
6 any final allocation and without prejudice as to any claim  
7 or right of either party or any counsel of record at the  
8 time of the award. Any such claim or right may be presented  
9 by the appropriate party or counsel at a hearing on  
10 contribution under subsection (j) of Section 503 or a  
11 hearing on counsel's fees under subsection (c) of Section  
12 508. Unless otherwise ordered by the court at the final  
13 hearing between the parties or in a hearing under  
14 subsection (j) of Section 503 or subsection (c) of Section  
15 508, interim awards, as well as the aggregate of all other  
16 payments by each party to counsel and related payments to  
17 third parties, shall be deemed to have been advances from  
18 the parties' marital estate. Any portion of any interim  
19 award constituting an overpayment shall be remitted back to  
20 the appropriate party or parties, or, alternatively, to  
21 successor counsel, as the court determines and directs,  
22 after notice.

23 (3) In any proceeding under this subsection (c-1), the  
24 court (or hearing officer) shall assess an interim award  
25 against an opposing party in an amount necessary to enable  
26 the petitioning party to participate adequately in the

1 litigation, upon findings that the party from whom  
2 attorney's fees and costs are sought has the financial  
3 ability to pay reasonable amounts and that the party  
4 seeking attorney's fees and costs lacks sufficient access  
5 to assets or income to pay reasonable amounts. In  
6 determining an award, the court shall consider whether  
7 adequate participation in the litigation requires  
8 expenditure of more fees and costs for a party that is not  
9 in control of assets or relevant information. Except for  
10 good cause shown, an interim award shall not be less than  
11 payments made or reasonably expected to be made to the  
12 counsel for the other party. If the court finds that both  
13 parties lack financial ability or access to assets or  
14 income for reasonable attorney's fees and costs, the court  
15 (or hearing officer) shall enter an order that allocates  
16 available funds for each party's counsel, including  
17 retainers or interim payments, or both, previously paid, in  
18 a manner that achieves substantial parity between the  
19 parties.

20 (4) The changes to this Section 501 made by this  
21 amendatory Act of 1996 apply to cases pending on or after  
22 June 1, 1997, except as otherwise provided in Section 508.

23 (d) A temporary order entered under this Section:

24 (1) does not prejudice the rights of the parties or the  
25 child which are to be adjudicated at subsequent hearings in  
26 the proceeding;

1           (2) may be revoked or modified before final judgment,  
2           on a showing by affidavit and upon hearing; and

3           (3) terminates when the final judgment is entered or  
4           when the petition for dissolution of marriage or legal  
5           separation or declaration of invalidity of marriage is  
6           dismissed.

7           (e) This subsection (e) applies only to the jury trial  
8           pilot program established under Section 103. All proceedings  
9           for temporary relief shall be heard by the court without a  
10           jury.

11           (Source: P.A. 89-712, eff. 6-1-97.)

12           (750 ILCS 5/511) (from Ch. 40, par. 511)

13           Sec. 511. Procedure. A judgment of dissolution or of legal  
14           separation or of declaration of invalidity of marriage may be  
15           enforced or modified by order of court pursuant to petition.

16           (a) Any judgment entered within this State may be enforced  
17           or modified in the judicial circuit wherein such judgment was  
18           entered or last modified by the filing of a petition with  
19           notice mailed to the respondent at his last known address, or  
20           by the issuance of summons to the respondent. If neither party  
21           continues to reside in the county wherein such judgment was  
22           entered or last modified, the court on the motion of either  
23           party or on its own motion may transfer a post-judgment  
24           proceeding, including a proceeding under the Income  
25           Withholding for Support Act, to another county or judicial

1 circuit, as appropriate, where either party resides. If the  
2 post-judgment proceeding is with respect to maintenance or  
3 support, any such transfer shall be to the county or judicial  
4 circuit wherein the recipient or proposed recipient of such  
5 maintenance or support resides.

6 (b) In any post-judgment proceeding to enforce or modify in  
7 one judicial circuit the judgment of another judicial circuit  
8 of this State, the moving party shall commence the proceeding  
9 by filing a petition establishing the judgment and attaching a  
10 copy of the judgment as a part of the petition. The parties  
11 shall continue to be designated as in the original proceeding.  
12 Notice of the filing of the petition shall be mailed to the  
13 clerk of the court wherein the judgment was entered and last  
14 modified in the same manner as notice is mailed when  
15 registering a foreign judgment. Summons shall be served as  
16 provided by law.

17 (c) In any post-judgment proceeding to enforce or modify  
18 the judgment of another state, the moving party shall commence  
19 the proceeding by filing a petition to enroll that judgment,  
20 attaching a copy thereof as a part of the petition and proceed  
21 as provided for in paragraph (b) hereof.

22 (d) In any post-judgment proceeding to enforce a judgment  
23 or order for payment of maintenance or support, including a  
24 proceeding under the Income Withholding for Support Act, where  
25 the terms of such judgment or order provide that payments of  
26 such maintenance or support are to be made to the clerk of the

1 court and where neither party continues to reside in the county  
2 wherein such judgment or order was entered or last modified,  
3 the court on the motion of either party or on its own motion  
4 may transfer the collection of the maintenance or support to  
5 the clerk of the court in another county or judicial circuit,  
6 as appropriate, wherein the recipient of the maintenance or  
7 support payments resides.

8 (e) This subsection (e) applies only to the jury trial  
9 pilot program established under Section 103. All post-judgment  
10 proceedings to enforce or modify a judgment of dissolution,  
11 legal separation, or invalidity of marriage shall be heard by  
12 the court without a jury.

13 (Source: P.A. 90-673, eff. 1-1-99.)

14 (750 ILCS 5/604) (from Ch. 40, par. 604)

15 Sec. 604. Interviews.) (a) The court may interview the  
16 child in chambers to ascertain the child's wishes as to his  
17 custodian and as to visitation. Counsel shall be present at the  
18 interview unless otherwise agreed upon by the parties. The  
19 court shall cause a court reporter to be present who shall make  
20 a complete record of the interview instantaneously to be part  
21 of the record in the case.

22 (a-5) This subsection (a-5) applies only to the jury trial  
23 pilot program established under Section 103. In a case heard by  
24 the court with a jury, the court may not interview the child in  
25 chambers to ascertain the child's wishes as to his custodian

1 and as to visitation.

2 (b) The court may seek the advice of professional  
3 personnel, whether or not employed by the court on a regular  
4 basis. The advice given shall be in writing and made available  
5 by the court to counsel. Counsel may examine, as a witness, any  
6 professional personnel consulted by the court, designated as a  
7 court's witness.

8 (Source: P.A. 80-923.)

9 (750 ILCS 5/606) (from Ch. 40, par. 606)

10 Sec. 606. Hearings.

11 (a) Custody proceedings shall receive priority in being set  
12 for hearing.

13 (b) The court may tax as costs the payment of necessary  
14 travel and other expenses incurred by any person whose presence  
15 at the hearing the court deems necessary to determine the best  
16 interest of the child.

17 (c) The court, without a jury, shall determine questions of  
18 law and fact. If it finds that a public hearing may be  
19 detrimental to the child's best interest, the court may exclude  
20 the public from a custody hearing, but may admit any person who  
21 has a direct and legitimate interest in the particular case or  
22 a legitimate educational or research interest in the work of  
23 the court.

24 (c-5) This subsection (c-5) applies only to the jury trial  
25 pilot program established under Section 103. If a case is heard

1 by the court with a jury under Part III or Part IV and custody  
2 is contested, the court shall determine questions of law and  
3 the jury shall determine questions of fact. If the court finds  
4 that a public hearing may be detrimental to the child's best  
5 interest, the court may exclude the public from a custody  
6 hearing, but may admit any person who has a direct and  
7 legitimate interest in the particular case or a legitimate  
8 educational or research interest in the work of the court.

9 (d) If the court finds it necessary, in order to protect  
10 the child's welfare, that the record of any interview, report,  
11 investigation, or testimony in a custody proceeding be kept  
12 secret, the court may make an appropriate order sealing the  
13 record.

14 (e) Previous statements made by the child relating to any  
15 allegations that the child is an abused or neglected child  
16 within the meaning of the Abused and Neglected Child Reporting  
17 Act, or an abused or neglected minor within the meaning of the  
18 Juvenile Court Act of 1987, shall be admissible in evidence in  
19 a hearing concerning custody of or visitation with the child.  
20 No such statement, however, if uncorroborated and not subject  
21 to cross-examination, shall be sufficient in itself to support  
22 a finding of abuse or neglect.

23 (Source: P.A. 87-1081.)".